

Brigham Young University Law School BYU Law Digital Commons

Utah Supreme Court Briefs (1965 –)

1979

Roger Schmitt v. Richard A. Billings et al : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Robert B. Hansen; Craig L. Barlow; Attorneys for Respondent;

Roger Schmitt; Plaintiff Pro Se;

Recommended Citation

Brief of Appellant, *Schmitt v. Billings*, No. 16084 (Utah Supreme Court, 1979).

https://digitalcommons.law.byu.edu/uofu_sc2/1444

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT
OF THE
STATE OF UTAH

ROGER SCHMITT, :
Plaintiff-Appellant, :
vs :
RICHARD A. BILLINGS, SAM SMITH, : Case No. 16084
UTAH STATE PRISON, DIVISION OF :
CORRECTIONS, DEPARTMENT OF SOCIAL :
SERVICES OF THE STATE OF UTAH, :
and JAMES BARTELL, :
Defendants-Respondents. :

BRIEF OF APPELLANT

AN APPEAL FROM THE ORDER OF DISMISSAL AND
ORDER DENYING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT
IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE G. HAL TAYLOR, JUDGE PRESIDING

ROBERT HANSEN
Attorney General for the State of Utah
CRAIG L. BARLOW
Assistant Attorney General
236 State Capitol
Salt Lake City, Utah 84114
Attorneys for Defendants-
Respondents

ROGER SCHMITT
P.O. Box 250
Draper, Utah 84020
Plaintiff Pro Se

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF CONTENTS	3
NATURE OF THE CASE.	6
DISPOSITION IN LOWER COURT.	7
RELIEF SOUGHT ON APPEAL	7
STATEMENT OF CASE	7
STATEMENT OF FACTS.	8
ARGUMENT.	10
Point I	
THE LOWER COURT IMPROPERLY GRANTED DEFENDANTS' MOTION TO DISMISS. THE PLEADINGS MAY SHOW A GENUINE ISSUE AS TO MATERIAL FACTS, AND STATED CLAIM UPON WHICH RELIEF CAN BE GRANTED	10
Point II	
THE LOWER COURT ERRED IN DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT	12
Point III	
THE DEFENDANTS MAY PROPERLY BE SUED BY PLAINTIFF FOR THE INJURY THEY CAUSED HIM	14
CONCLUSION.	17

Page

AUTHORITIES CITED

CASES

<u>Disabled American Veterans vs Henrixson,</u>	
9 Utah 2d 152, 340 P.2d 416 (1959) . . .	14
<u>Gardner vs Park West Village,</u>	
568 P.2d 734 (Utah, 1977)	13
<u>Holbrook Co. vs Adams,</u>	
542 P.2d 191 (Utah, 1975)	12
<u>Liquor Control Commission vs Athas,</u>	
121 Utah 457, 243 P.2d 441 (1952) . . .	10
<u>Madsen vs State of Utah,</u>	
583 P.2d 92 (Utah, 1978)	16

STATUTES

Utah Code Annotated, (1953)	
Section 63-30-10(10)	14, 15, 16

RULES

Utah Rules of Civil Procedure	
Rule 12(b)(6)	10

	<u>Page</u>
Rule 36	12, 13
Rule 56	8
Rule 56(c)	10

IN THE SUPREME COURT
OF THE
STATE OF UTAH

ROGER SCHMITT, :
Plaintiff-Appellant, :
vs. : Case No. 16084
RICHARD A. BILLINGS, SAM :
SMITH, UTAH STATE PRISON, :
DIVISION OF CORRECTIONS, :
DEPARTMENT OF SOCIAL SERVICES :
OF THE STATE OF UTAH, and :
JAMES BARTELL, :
Defendants-Respondents. :

BRIEF OF APPELLANT

I

NATURE OF THE CASE

This action, initiated by the Plaintiff-Appellant in the Court below, is a civil action for specific damages against officers of the Utah State Prison, the Warden of the Prison, the Division of Corrections Department of Social Services of the State of Utah, and the Prison itself for Defendants-Respondents' negligent handling of Plaintiff-Appellant's personal property.

II

DISPOSITION IN LOWER COURT

The lower Court granted the Defendants' Motion to Dismiss the Plaintiff's Complaint and denied the Plaintiff's Motion for Summary Judgment.

III

RELIEF SOUGHT ON APPEAL

Plaintiff-Appellant seeks reversal of the judgment of dismissal and judgment in his favor on the Plaintiff's Motion for Summary Judgment, or in the alternative remand and a trial on the merits.

IV

STATEMENT OF CASE

This action was filed in the Third Judicial District Court in and for the County of Salt Lake, seeking specific damages. The Defendants were served and appeared by their counsel, and in lieu of filing an Answer to the Complaint, filed a Motion to Dismiss. The Plaintiff filed a Motion for Summary Judgment. The Motion for Summary Judgment was supported by affidavit. Plaintiff also served the Defendants with Interrogatories and Requests for Admissions. These were never answered. Under the Utah Rules of Civil Procedure said Requests for Admissions were deemed admitted. Both parties submitted Memorandums in support of their Motions. The Motions

were argued to the Court on September 8, 1978. Both Motions were considered by the Court pursuant to Rule 56 of the Utah Rules of Civil Procedure. The Court granted the Defendants' Motion to Dismiss and denied the Plaintiff's Motion for Summary Judgment.

The Plaintiff filed a timely notice of appeal on the dismissal of his Complaint and on the denial of his Motion for Summary Judgment.

V

STATEMENT OF FACTS

The Plaintiff is an inmate at the Utah State Prison, at Draper, Utah (hereinafter, the prison.) The Defendants James Bartell and Richard A. Billings at all times pertinent to this action were employees of the prison and worked there as property officers under the direction of the Defendant Sam Smith and the Defendant government agency. At the time of the filing of this action in the Court below, Defendant Sam Smith was warden of the prison and worked under the direction of the Defendant government agency.

Directly prior to July 31, 1977, the Plaintiff was an inmate housed in a cell on the fourth deck of A-Block at the prison, and was in possession of various items of personal property. On or about July 31, 1977, Plaintiff was transferred to another cell within the prison located on B-Block North.

The Plaintiff was instructed not to bring his personal property to his new cell, but was told by a prison officer that his personal property would be stored by the prison property officers, the Defendants James Bartell and Richard A. Billings.

On or about November 22, 1977, the Plaintiff was transferred from B-Block North to A-Block at the prison. Plaintiff requested that the Defendants return the personal items left in his cell on July 31, 1977. On November 23, 1977, the Defendant Richard A. Billings returned to Plaintiff some of the items which were in his possession on July 31, but some of the items of personal property were not and have never been returned to Plaintiff. These items include a bathrobe, pair of sandals, wrist watch, rug, jacket, tape measure, pair of house slippers and two pair of jeans.

The Plaintiff repeatedly requested the Defendants return the missing items or compensate Plaintiff for their loss. The Defendants refused to do so and Plaintiff filed the action below seeking a judgment against Defendants in the amount of \$149. as the value of the Plaintiff's missing property.

The foregoing statement of facts is based upon the Plaintiff's Verified Complaint, the affidavit of the Plaintiff and the unanswered Requests for Admissions served upon the Defendants. These facts were never controverted by the Defendants.

VI

ARGUMENT

Point I

THE LOWER COURT IMPROPERLY GRANTED DEFENDANTS' MOTION TO DISMISS. THE PLEADINGS MAY SHOW A GENUINE ISSUE AS TO MATERIAL FACTS, AND STATED CLAIM UPON WHICH RELIEF CAN BE GRANTED.

It is improper pursuant to Rule 56(c) of the Utah Rules of Civil Procedure for a trial court to grant a defendant's motion to dismiss unless the pleadings "...show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Moreover, it is improper for a trial court to grant a defendant's motion pursuant to Rule 12(b)(6) of the Utah Rules of Civil Procedure unless the Plaintiff has failed "...to state a claim upon which relief can be granted." In determining whether or not a Plaintiff has stated a claim for which relief can be granted, a court must determine whether the plaintiff would be entitled to relief under any set of facts which could be proved in support of his claim. Liquor Control Commission vs Athas, 121 Utah 457, 243 P.2d 441 (1952).

The lower Court erred under both the foregoing rules in making its determination in the instant case. In the

present action the Plaintiff has stated a claim against Defendants for their negligent acts resulting in Plaintiff's loss of his personal property. It is a well settled principle of Anglo-American law that persons who negligently cause other persons to lose the enjoyment of their property may be held liable for that loss. In addition, the Plaintiff has brought this action against individuals who may be held for, and are not immune from, liability for their negligence toward Plaintiff, as is demonstrated in Point III below. Hence, under the set of facts Plaintiff has alleged and established by affidavit, he would be entitled to relief, and his Complaint was improperly dismissed.

There is an apparent dispute as to material facts in the instant case. While Defendants have admitted most elements of Plaintiff's case due to their failure to respond to Plaintiff's Requests for Admissions, they have asserted in their Memorandum in Support of Defendants' Motion to Dismiss, paragraph one, that Plaintiff's concerns have already been dealt with by prison officials and that Plaintiff has acknowledged receipt of all personal property at issue. (This allegation was not supported by affidavit or any other proof.) On the other hand, Plaintiff has submitted to the Court an affidavit stating that the alleged acknowledgement of receipt of the property deals with items other than the personal property at issue. Hence, there is an apparent dispute as to

material fact. There is a dispute as to whether Plaintiff did or did not lose the property at issue, since one sworn statement disputing averments of the opposing party creates an issue of fact precluding summary judgment. Holbrook Co. vs Adams, 542 P.2d 191 (Utah, 1975.) It was improper for the lower Court to dismiss Plaintiff's Complaint.

Point II

THE LOWER COURT ERRED IN DENYING
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT.

It was improper for a trial court to deny a plaintiff's motion for summary judgment since it was clear that there are no real issues as to material fact and that all material facts have been admitted in favor of the Plaintiff.

In the present action, the Defendants have admitted all elements of Plaintiff's case. On June 22, 1978, the Plaintiff filed with the Court and caused to be served upon Defendants certain Requests for Admissions, pursuant to Rule 36 of the Utah Rules of Civil Procedure. The Defendants to date have not answered said Requests for Admissions, and have not filed any objections with the Court in response to said Request for Admissions. According to Rule 36 of the Utah Rules of Civil Procedure, Requests for Admissions must be answered or objected to within thirty days, or the matter of which an admission is requested is deemed admitted.

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within thirty days after service of the request, or within such shorter or longer time as the court may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney... (Utah Rules of Civil Procedure, Rule 36)

The Defendants have allowed the designated thirty day period to elapse without responding in any way whatsoever to Plaintiff's Requests for Admissions, and the matters of which Plaintiff requested admission should be deemed admitted and should be deemed undisputed facts as of the time the Court below heard Plaintiff's Motion for Summary Judgment.

Gardner vs Park West Village, 568 P.2d 734 (Utah, 1977.)

Through Defendants' failure to respond to Plaintiff's Requests for Admissions, they have established as undisputed fact all elements necessary to establish Plaintiff's cause of action. They have admitted that Plaintiff was lawfully possessed of the personal property at issue (paragraphs three and four of Plaintiff's Requests for Admissions), that Defendants caused him to be dispossessed of his property (paragraph four), the Defendants Bartell and Billings were responsible for Plaintiff's personal property (paragraph six), that they were under the supervision of the other Defendants (paragraphs one and two), that Plaintiff lost his personal property (paragraphs nine and ten), that said loss was due to

Defendants' negligence (paragraphs eight and nine), and the Plaintiff was damaged in the amount of \$149. (paragraphs ten, eleven, and twelve).

The Defendants have attempted to raise the defense that Plaintiff never lost any of the property at issue and they rely on a receipt signed by Plaintiff allegedly acknowledging return of the property at issue. However, Defendants have waived their defense by admitting paragraphs nine and ten of Plaintiff's Requests for Admissions. In addition, Plaintiff has filed an affidavit stating that the receipt relied upon by Defendants acknowledges the return of property other than the property at issue, while Defendants have filed no sworn statements in behalf of defense.

Hence, a summary judgment should have been entered in Plaintiff's behalf by the trial court since on the undisputed facts Plaintiff has established all elements of his claim and the Defendants have no valid defense. Disabled American Veterans vs Henrixson, 9 Utah 2d 152, 340 P.2d 416 (1959).

Point III

THE DEFENDANTS MAY PROPERLY BE SUED
BY PLAINTIFF FOR THE INJURY THEY
CAUSED HIM.

In trial court, the Defendants raised the issue of their susceptibility to suit by Plaintiff, by claiming that U.C.A., 1953, §63-30-10(10) renders them immune from liability

in negligence actions. Said statute reads in part as follows:

\$63-30-10 WAIVER OF IMMUNITY -- INJURY CAUSED
BY NEGLIGENT ACT OR OMISSION OF EMPLOYEE --
EXCEPTIONS --

Immunity from suit of all governmental entitles
is waived for injury proximately caused by a
negligent act or omission of any employee
committed within the scope of his employment
except if the injury...(10) arises out of the
incarceration of any person in a state prison,
county or city jail or other place of legal
confinement...

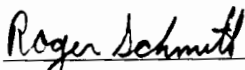
The Defendants claim that the above statute renders
them immune from liability in the pursuant action because
"...the entire incident [complained of] occurred while the
Plaintiff was incarcerated within the Utah State Prison."
(Defendants' Memorandum in Support of Motion to Dismiss.)

The Defendants thus seem to claim that no prison
personnel should be held responsible for any negligent act
directed at a prisoner or his property merely because the
prisoner is at that moment confined within the prison. Such
a construction of the above statute would not be in the
interests of public policy since it would encourage careless-
ness and recklessness on the part of prison employees. Such
a construction would be morally repugnant in that it would
cause all persons to shed their rights to any duty of care
from other persons at the moment they are sentenced to prison.
The statute should be narrowly construed so as to allow recovery
for negligent damage to prisoner's property caused by prison
officers.

However, should the Court determine that Plaintiff cannot maintain this action against Defendants as government employees, summary judgment should be entered in Plaintiff's behalf against the individual Defendants as individuals. U.C.A., 1953, §63-30-10(10) does not preclude tort recovery against prison employees as individuals even though the claim arises out of the incarceration of a person at the prison. Madsen vs State of Utah, 583 P.2d 92 (Utah, 1978.)

CERTIFICATE OF MAILING

I hereby certify that I mailed two true and correct copies of the foregoing Brief of Appellant to Craig Barlow, Assistant Attorney General, 236 Capitol Building, Salt Lake City, Utah 84114, this 20th day of December, 1978.

A handwritten signature in cursive script, reading "Roger Schmitt", written over a horizontal line.

ROGER SCHMITT
Plaintiff Pro Se